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**TRANSMITTAL  
FORM**

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number 09/638,241

Filing Date August 14, 2000

First Named Inventor FERREE

Art Unit 3773

Examiner Name Woo, Julian

Attorney Docket Number 026,314-018

**ENCLOSURES (Check all that apply)**

- |   |  |   |
|---|--|---|
| <input type="checkbox"/> Fee Transmittal Form<br><input type="checkbox"/> Fee Attached<br><input type="checkbox"/> Amendment/Reply<br><input type="checkbox"/> After Final<br><input type="checkbox"/> Affidavits/declaration(s)<br><input type="checkbox"/> Extension of Time Request<br><input type="checkbox"/> Express Abandonment Request<br><input checked="" type="checkbox"/> Information Disclosure Statement<br><br><input type="checkbox"/> Certified Copy of Priority Document(s)<br><input type="checkbox"/> Reply to Missing Parts/<br>Incomplete Application<br><input type="checkbox"/> Reply to Missing Parts<br>under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> Drawing(s)<br><input type="checkbox"/> Licensing-related Papers<br><input type="checkbox"/> Petition<br><input type="checkbox"/> Petition to Convert to a<br>Provisional Application<br><input type="checkbox"/> Power of Attorney, Revocation<br>Change of Correspondence Address<br><input type="checkbox"/> Terminal Disclaimer<br><input type="checkbox"/> Request for Refund<br><input type="checkbox"/> CD, Number of CD(s) _____<br><input type="checkbox"/> Landscape Table on CD | <input type="checkbox"/> After Allowance Communication to TC<br><input type="checkbox"/> Appeal Communication to Board<br>of Appeals and Interferences<br><input type="checkbox"/> Appeal Communication to TC<br>(Appeal Notice, Brief, Reply Brief)<br><input type="checkbox"/> Proprietary Information<br><input type="checkbox"/> Status Letter<br><input checked="" type="checkbox"/> Other Enclosure(s) (please identify<br>below):<br>- Copies of 7 cited references<br>- Receipt verification postcard |
|---|--|---|

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name O'MELVENY &amp; MYERS LLP

Signature

*Diane K. Pang*

Printed name

Diane K. Pang

Date

May 16, 2008

Reg. No.

54,550

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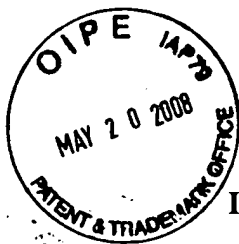
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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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Patent  
Attorney Docket No. 026,314-018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of:

**FERREE**

**Serial No.: 09/638,241**

Filed: August 14, 2000

For: METHODS AND APPARATUS FOR  
TREATING DISC HERNIATION AND  
PREVENTING THE EXTRUSION OF  
INTERBODY BONE GRAFT

Group Art Unit: 3773

Examiner: Julian W. Woo

**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with 37 CFR §§ 1.97 and 1.98, the items identified in this Information Disclosure Statement ("IDS") are brought to the attention of the Office. The items are listed on the attached form PTO-SB/08. Please be advised that the cited references were recently identified in the prosecution of a corresponding foreign patent application (copy attached as Exhibit A). A copy of the English translation is attached as Exhibit B. Copies of the foreign patents have been included. Applicant respectfully requests that the Examiner review this Form PTO/SB/08, initial the left-most column, and return an initialed copy of the form to the applicant.

The items identified in this IDS may or may not be "material" pursuant to 37 CFR § 1.56. The submission thereof by Applicant is not to be construed as an admission that any such patent, publication or other information referred to therein is material or considered to be material (37 CFR § 1.97(h)), or even qualifies as "prior art" under 35 USC § 102 with respect to this invention unless specifically designated by Applicant as such.

CERTIFICATE OF MAILING (37 C.F.R. §1.8a)

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May 16, 2008

Date of Deposit  
2741378.1

*Ria Desiree S. Mangray*  
Ria Desiree S. Mangray

**INFORMATION DISCLOSURE STATEMENT FILING PROVISION:**

☐ This IDS is believed to be timely in that it is being submitted under 37 CFR § 1.97(b), that is (1) within three months of the filing date of the application, which is not a continued prosecution application filed under § 1.53(d); or (2) within three months of entry of the national stage as set forth in 37 CFR § 1.491; or (3) before the mailing of a first Office action on the merits; or (4) before the mailing of a first Office action after filing a request for continued examination under § 1.114. Thus, no fee is required.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and charge the fee due under 37 CFR § 1.17(p) to the deposit account referenced below.

☐ However, if the undersigned is in error in this regard, Applicant respectfully requests that the Office consider this IDS as filed under 37 CFR § 1.97(c), if applicable, and a statement under 37 CFR § 1.97(e) is included below, thus no fee is required.

☒ This IDS is being submitted under 37 CFR § 1.97(c), that is after mailing of a first Office action on the merits, but before a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311.

☐ The fee due under 37 CFR § 1.17(p) is submitted herewith.

☒ A statement under 37 CFR § 1.97(e) is included below, thus no fee is required. In the event that this IDS is not received before a Final Action or a Notice of Allowance, then Applicant respectfully requests that the Office consider the filing of these papers to be submitted under 37 CFR § 1.97(d) and charge the fee due under 37 CFR § 1.17(p) to the deposit account below.

☐ This IDS is being submitted under 37 CFR § 1.97(d), that is after a Final Action under 37 CFR § 1.113 or a Notice of Allowance under 37 CFR § 1.311, but before payment of the issue fee. A statement under 37 CFR § 1.97(e) is included below. The fee due under 37 CFR § 1.17(p) is submitted herewith.

**Statement Under 37 CFR § 1.97(e):**

☒ Each item contained in this IDS was first cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this IDS.

☐ No item contained in this IDS was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing this statement after making reasonable inquiry, no item of information contained in this IDS was known to any individual designated in 37 CFR § 1.56(c) more than three months prior to the filing of this IDS.

Four references are in a language other than the English language. A concise explanation of relevance is given below.

**JP5508795 - HYDROGEL INTERVERTEBRAL DISC NUCLEUS**

(Abstract of correspondent: WO 92/10982)

A prosthetic nucleus for vertebral disc is made of hydrogel material. The hydrogel prosthetic nucleus has a shape generally conforming to the natural nucleus pulposus. The hydrogel has water content of at least 30% and has a compressive strength of  $4\text{MNm}^{-2}$  or greater. When the hydrogel material is dehydrated, it has a dimension less than half of that of the hydrated hydrogel nucleus. The prosthetic nucleus may be formed of two or more pieces of hydrogel material which pieces, when combined, have a shape generally conforming to the natural nucleus. The prosthetic nucleus for implantation in the disc space after removal of a damaged or degenerated nucleus may also be formed from a multiplicity of hydrogel beads having a water content of at least 30%. The beads are covered by a semi-permeable membrane. The membrane has porosity less than the size of the beads to thereby retain the beads therein but permit fluids to flow in and out of the prosthetic nucleus.

**JP8098851 - HYDROGEL INTERVERTEBRAL DISK CORE**

**PROBLEM TO BE SOLVED:** To balance the static water pressure against the outer load easily by having at least one hydrophilic xerogel rod which absorbs water from an aqueous composition when it is bound by the disc annulus thereby to expand and fill up the cavity.  
**SOLUTION:** A hydrogel prosthetic nucleus 10 implanted in the disc 12 of a vertebra 14 is surrounded by a natural annulus 16. The equilibrium water contents of the hydrogel are set within the range of from about 30 to about 90%. The xerogel contents are 10 to 70% of hydrogel contents with such equilibrium water contents. The xerogel rod is so formed as to have a diameter of from about 2 to about 10 mm. Such hydrogel preferably contains polyvinyl alcohol (PVA) gel, made by crystallizing a PVA solution under minus 10 degrees centigrade. When the xerogel rod absorbs water, the hydrogel expands and fills up the intervertebral foramina cavity.

**JP7000430 - IMPLANT-TYPE PROSTHESIS FOR RESTORING DEFECTIVE PART OF TISSUE OR MUSCULAR WALL AND ITS RESTORING METHOD**

**PURPOSE:** To provide a prosthesis suited for the repairing of ventral hernia.  
**CONSTITUTION:** This implantable prosthesis 10 has a conical mesh plug 12 having a pleated surface which fits the contour of a defective part to be repaired. Mesh fillers 14, 16 placed within the plug 12 reinforce the implanted body when compressed inside the defective part.

**JP 10507386 - PROSTHETIC SPINAL DISC NUCLEUS**

(Abstract of correspondent: U.S. Patent No. 5,674,295)

An elongated, pillow shaped prosthetic spinal disc nucleus body for implantation into a human intervertebral spinal disc, made of a hydrogel core and a flexible constraining jacket surrounding the hydrogel material core that permits the hydrogel core to expand and contract. The hydrogel core has a length approximating the sagittal diameter of a nucleus of the human disc, a width less than the length, and a height less than the length or width. The hydrogel